IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 2 OF 2005

Kashinath Rama Ghadse & Anr. ...Appellants

Versus

Ramchandra Dhondu Ghadse ...Respondent

.....

Ms. S.A. Mudbidri, Advocate for the Appellant

.....

CORAM: A.S. OKA, J.

DATED: 12TH JANUARY, 2005

P.C.:-

1. Heard the learned advocate appearing for the Appellants.

2. Learned Advocate submitted that the mother of the original Plaintiff purchased certain properties in the year 1937 by a registered sale deed. All the properties forming part of Gut No. 1158 were not purchased by the mother of the Plaintiff in the year 1937. She, therefore submitted that in view of this admitted position, decree for perpetual injunction in respect of the land bearing Gut No.1158 could not have been passed.

3. The appellate Court has relied upon the certificate under Section 24(1) of Bombay Prevention

of Fragmentation and Consolidation of Holdings Act, 1947 issued in favour of the mother of the Plaintiff. The said certificate is a document of title in favour of the Plaintiff. In view of the said certificate the appellate Court held that the original Plaintiff has proved his ownership and lawful possession over the land in question. If the authorities under the said Act of 1947 have granted certificate under Section 24(1), the Civil Court cannot decide the question of legality of the proceedings before the authority under the said Act, 1947. So long as the certificate under section 24(1) is not set aside, the Plaintiff will be presumed to be the owner of Gut No.1158.

4. In this view of the matter, no fault can be found in the approach of the appellate Court. No substantial questions of law arises. Second Appeal is therefore, dismissed with no order as to costs.

5. It is made clear that if any proceedings are pending between the parties under the provisions of the said Act 1947, the said proceedings will be decided by the authorities under the said Act, 1947 on its own merits.

6. Parties to act on an authenticated copy of this order.